

SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV17884185

D1 FX

SUMMONS NO.
32957801

CHAGRIN SURGERY CENTER, LLC
VS
WEST AMERICAN INSURANCE COMPANY

PLAINTIFF
DEFENDANT

WEST AMERICAN INSURANCE COMPANY
50 WEST BROAD STREET, SUITE 1300
COLUMBUS OH 43215

Said answer is required to be served on:



Plaintiff's Attorney

ROBERT A. RUTTER
4700 ROCKSIDE ROAD SUITE 650
CLEVELAND, OH 44131-0000

Case has been assigned to Judge:

BRENDAN J SHEEHAN
Do not contact judge. Judge's name is given for
attorney's reference only.

DATE SENT
Aug 8, 2017

By _____
Deputy

Rule 4 (B) Ohio
Rules of Civil
Procedure

SUMMONS

You have been named defendant in a summons
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to
answer the complaint within 28 days after service
of this summons upon you, exclusive of the day of
service.

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.



COMPLAINT FILED 08/08/2017





**NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113**

Court of Common Pleas

**New Case Electronically Filed:
August 8, 2017 09:06**

By: ROBERT A. RUTTER 0081503

Confirmation Nbr. 1139887

CHAGRIN SURGERY CENTER, LLC

CV 17 884185

vs.

WEST AMERICAN INSURANCE COMPANY

Judge: BRENDAN J. SHEEHAN

Pages Filed: 13

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHAGRIN SURGERY CENTER, LLC
24025 Commerce Park, Suite 2
Beachwood, Ohio 44122

CASE NO.

JUDGE

Plaintiff

**COMPLAINT FOR DECLARATORY
AND OTHER RELIEF**

vs.
WEST AMERICAN INSURANCE
COMPANY
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

(Jury Demand Endorsed Hereon)

Defendant

GENERAL ALLEGATIONS

1. Plaintiff Chagrin Surgery Center, LLC (“Chagrin Surgery”) is an Ohio Limited Liability Company with its principle place of business in Cuyahoga County, Ohio.
2. Defendant West American Insurance Company (“West American”) is an insurance company doing business in Ohio.
3. Chagrin Surgery operates a surgical center at 24025 Commerce Park, Suite 2, Beachwood, Ohio.
4. West American insured the business personal property at Chagrin Surgery pursuant to policy number BZW 17 57 14 92 26. The effective policy period was from 6/15/2016 to 06/15/2017. The declarations pages are attached as Exhibit 1.
5. In connection with its business, Chagrin Surgery stores an inventory of optical lenses which are used for implants.

6. The lenses were stored in a “room temperature” storage cabinet in the surgical room.
 7. The wholesale value of the lenses was approximately \$750,000.
 8. On August 15, 2016, an air conditioning unit that cooled the surgical room malfunctioned due to a mechanical problem, which caused the humidity to spike to an unnatural level rendering the lenses unfit for implantation.
 9. Chagrin Surgery promptly reported the loss to West American.
 10. The policy provides that West American will “pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”
 11. The lenses were Covered Property and the event occurred at the described premises.
 12. The event that occurred on August 15, 2016 was covered by West American’s insurance policy for the full amount of the loss.
 13. West American took the position that the lenses were Perishable Goods subject to a coverage limit of only \$60,000. See Exhibits 2 and 3.
- COUNT I - BREACH OF CONTRACT**
14. Chagrin Surgery restates the above allegations as if contained herein.
 15. On the date of the loss Chagrin Surgery had a contract with West American.
 16. Chagrin Surgery has fully performed its duties under the contract.
 17. West American breached the contract by failing to pay Chagrin Surgery the full amount due under the terms of the policy.

18. As a direct and proximate result of West American's breach of the insurance contract, Chagrin Surgery has been denied the policy benefits due under the contract in an amount in excess of \$25,000. As a further direct and proximate result of West American's breach of the insurance contract, Chagrin Surgery has suffered other reasonably contemplated damages.

COUNT II – DECLARATORY JUDGMENT

19. Chagrin Surgery restates the above allegations as if contained herein.
20. Plaintiff has a written contract with West American.
21. West American has denied or constructively denied plaintiff's insurance claim.
22. Pursuant to R.C. §2721.03 and R.C. §2721.04, plaintiff is entitled to a declaratory judgment from this court construing the policy and the terms, limitations, and conditions contained in the policy. Specifically, plaintiff is entitled to a declaration as to whether, based on the policy language, this is a covered claim; whether West American was allowed by the contract language to refuse to pay plaintiff based on the product being a "perishable good"; whether there is coverage only under the equipment breakdown peril; and whether Liberty is obligated to appraise the amount of the loss pursuant to the Policy's Appraisal condition.
23. Plaintiff requests this Court to resolve these disputes between the parties by issuing a declaration of rights to the extent permitted by Ohio law. The plaintiff further prays for any further relief the Court deems proper, including but not limited to, an award of attorney fees, interest, and costs, as well as judgment against the defendants as specified above.

WHEREFORE, plaintiff prays for judgment against Liberty as set forth above, plus interest, costs, and attorney fees as allowed by law, and such other relief as the Court, in the exercise of its equitable jurisdiction, deems proper.

Respectfully submitted,

/s/ Robert A. Rutter _____

Robert A. Rutter (0081503)
Robert P. Rutter (0021907)
RUTTER & RUSSIN, LLC
One Summit Office Park, Suite 650
4700 Rockside Road
Cleveland, Ohio 44131
(216) 642-1425
bobbyrutter@OhioInsuranceLawyer.com
brutter@OhioInsuranceLawyer.com

JURY DEMAND

Plaintiff hereby requests, pursuant to Civil Rule 38(B), a trial by jury of the issues of the within lawsuit.

/s/ Robert A. Rutter _____

ROBERT A. RUTTER
Attorney for Plaintiff



Coverage is provided in:
West American Insurance Company

Commercial Protector Common Policy Declarations

**Policy Number:
BZW(17) 57 14 92 26**
**Policy Period:
From 08/15/2016 To 06/15/2017**
***12:01 am Standard Time
at Insured Mailing Location***

Named Insured & Mailing Address

CHAGRIN SURGERY CENTER LLC
24025 COMMERCE PARK STE 2
BEACHWOOD, OH 44122

Agent Mailing Address & Phone No.

(216) 289-1500
STRASSMAN INSURANCE SVC INC
26351 CURTISS WRIGHT PKWY
RICHMOND HTS, OH 44143-4412

Named Insured Is: LIMITED LIABILITY COMPANY

Named Insured Business Is: SURGEON OFFICE -

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

SUMMARY OF COVERAGE PARTS AND CHARGES

These Declarations together with the Businessowners Coverage Form (and other applicable forms and endorsements, if any, issued to form a part of them) complete this policy.

COVERAGE PART	CHARGES
Commercial Protector	\$5,641.00
<i>Total Charges for all of the above coverage parts:</i>	\$5,641.00
<i>Certified Acts of Terrorism Coverage:</i>	\$28.00 <i>(Included)</i>

IMPORTANT MESSAGES

- Equipment Breakdown Enhancement Is Included - See Policy Forms and Endorsements summary

Servicing Office Ohio Regional Office
and Issue Date 05/02/16

Authorized Representative

To report a claim, call your Agent or 1-800-362-0000

DS 70 21 01 08

Exhibit

1



Coverage Is Provided In:
West American Insurance Company

Policy Number:
BZW (17) 57 14 92 26

Policy Period:
From 06/15/2016 To 06/15/2017
12:01 am Standard Time
at Insured Mailing Location

Common Policy Declarations

Named Insured

CHAGRIN SURGERY CENTER LLC

Agent

(216) 289-1500
STRASSMAN INSURANCE SVC INC

SUMMARY OF LOCATION(S) AND PREMIUM(S)

0001 24025 Commerce Park Ste 2, Beachwood, OH 44122-5823 \$4,355.00

POLICY FORMS AND ENDORSEMENTS

This section lists the Forms and Endorsements for your policy. Refer to these documents as needed for detailed information concerning your coverage.

FORM NUMBER	TITLE
BP 00 03 07 13	Businessowners Coverage Form
BP 01 58 03 15	Ohio Changes
BP 04 02 07 13	Additional Insured - Managers or Lessors of Premises
BP 04 04 01 10	Hired Auto and Non-Owned Auto Liability
BP 04 17 01 10	Employment - Related Practices Exclusion
BP 04 39 07 02	Abuse Or Molestation Exclusion
BP 05 17 01 06	Exclusion - Silica Or Silica-Related Dust
BP 05 23 01 15	Cap On Losses From Certified Acts Of Terrorism
BP 05 77 01 06	Fungi or Bacteria Exclusion (Liability)
BP 06 72 07 13	Ohio - Stop Gap - Employer's Liability Coverage
BP 15 04 05 14	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - With Limited Bodily Injury Exception
BP 79 70 01 07	Welfare and Pension Plan ERISA Compliance
BP 79 74 07 13	Amendment of Pollution Exclusion (Premises)
BP 79 82 01 07	Employee Benefits Liability Coverage Endorsement
BP 79 96 07 13	Businessowners Liability Extension Endorsement
BP 80 56 07 13	Medical Office Endorsement
BP 80 65 01 07	Spoilage Coverage Endorsement
BP 81 15 03 11	Exclusion - Asbestos
BP 82 37 08 15	Equipment Breakdown Coverage Endorsement

In witness whereof, we have caused this policy to be signed by our authorized officers.

Dexter Legg
Secretary

Paul Condrin
President

To report a claim, call your Agent or 1-800-362-0000
DS 70 21 01 08



Coverage Is Provided In:
West American Insurance Company

Policy Number:
BZW (17) 57 14 92 26

Policy Period:
From 06/15/2016 To 06/15/2017
12:01 am Standard Time
at Insured Mailing Location

Commercial Protector Common Policy Declarations

Named Insured

CHAGRIN SURGERY CENTER LLC

Agent

(216) 289-1500
STRASSMAN INSURANCE SVC INC

POLICY FORMS AND ENDORSEMENTS - CONTINUED

This section lists the Forms and Endorsements for your policy. Refer to these documents as needed for detailed information concerning your coverage.

FORM NUMBER	TITLE
BP 82 42 07 13	Businessowners Property Plus Extension
BP 82 46 06 09	Employment - Related Practices Liability Coverage
BP 82 56 01 07	Additional Insured-Lessor of Leased Equipment
BP 88 04 03 12	Exclusion - Professional Services
BP 88 77 07 13	Identity Theft Administrative Services and Expense Coverage
BP 88 78 07 13	Business Personal Property Limit - Automatic Increase
BP 88 79 07 13	Ohio Changes - Stop Gap - Extended Employers Liability Coverage

To report a claim, call your Agent or 1-800-362-0000

DS 70 21 01 08

05/02/16 Electronically signed 08/08/2012 09:06:00 / CV 17 884185 / Confirmation Nbr. 113988267244

001105

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coverage is provided by:
West American Insurance Company

Policy Number:
BZW(17) 57 14 92 26
Policy Period:
From 06/15/2016 To 06/15/2017
12:01 am Standard Time
at Insured Mailing Location

Commercial Protector Policy Declarations

Named Insured

CHAGRIN SURGERY CENTER LLC

Agent

(216) 289-1500
STRASSMAN INSURANCE SVC INC

SUMMARY OF LIMITS AND CHARGES

Businessowners Liability Limits of Insurance	DESCRIPTION	LIMIT
	Liability and Medical Expenses - Occurrence	1,000,000
	Aggregate Limits of Insurance	
	Products-Completed Operations	2,000,000
	Other than Products-Completed Operations	2,000,000
	Broadened Coverage For Damage To Premises Rented To You	1,000,000
	Medical Expenses (Any One Person)	15,000

Explanation of Charges	DESCRIPTION	PREMIUM
	Businessowners Location(s) Total	\$4,355.00
	Businessowners Other Coverage(s) Total	\$1,258.00
	Certified Acts of Terrorism Coverage	\$28.00

Total Charges: **\$5,641.00**

Note: This is not a bill

To report a claim, call your Agent or 1-800-362-0000

DS 70 22 01 08

05/02/16 57149226 Electronically filed 08/08/2017 09:56 AM / CV 17 884185 / Comm Nbr. 113988REDDORMJ 001105 PAGE 63 OF 212



Coverage Is Provided In:
West American Insurance Company

Policy Number:
BZW(17) 57 14 92 26
Policy Period:
From 06/15/2016 To 06/15/2017
12:01 am Standard Time
at Insured Mailing Location

Commercial Protector Declarations Schedule

Named Insured

CHAGRIN SURGERY CENTER LLC

Agent

(216) 289-1500
STRASSMAN INSURANCE SVC INC

SUMMARY OF COVERAGES BY LOCATION

0001 24025 Commerce Park Ste 2, Beachwood, OH 44122-5823

Property Characteristics

Construction: Masonry Non-Combustible

Business Personal Property Coverage

DESCRIPTION

Limit of Insurance \$2,387,718

Covered Causes of Loss

Special Form

Deductible \$1,000

Automatic Increase Business Personal Property 2%

Premium \$4,288.00

Money and Securities

DESCRIPTION

Limit of Insurance - Inside \$25,000

Limit of Insurance - Outside \$25,000

Deductible \$500

Premium Included

Spoilage

DESCRIPTION

Limit of Insurance \$10,000

Deductible \$1,000

Premium \$57.00

To report a claim, call your Agent or 1-800-362-0000

DS 70 23 01 08

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57149226 NO147201 560 OCAOPPN0 INSURED COPY

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Coverage is provided in:

**Policy Number:
BZW(17) 57 14 92 26**
**Policy Period:
From 06/15/2016 To 06/15/2017**
*12:01 am Standard Time
at Insured Mailing Location*

Commercial Protector Declarations Schedule

Named Insured

Agent

CHAGRIN SURGERY CENTER LLC

(216) 289-1500
STRASSMAN INSURANCE SVC INC

SUMMARY OF COVERAGES BY LOCATION - CONTINUED

Continuation of 0001 24025 Commerce Park Ste 2, Beachwood, OH 44122-5823

<u>Additional Insured</u>	<u>DESCRIPTION</u>
	Lessor of Leased Equipment
	Office Equipment

See Endorsement

No Charge

**Additional
Insured** **DESCRIPTION**
Managers or Lessors of Premises

Premium \$10.00

SUMMARY OF OTHER COVERAGES

Employee Dishonesty Including Forgery and Alteration	DESCRIPTION	
	<u>Limit of Insurance</u>	\$50,000
	<u>Number of Employees</u>	10
	<u>Deductible</u>	\$500

To report a claim, call your Agent or 1-800-362-0000

DS 70 23 01 08

05/02/16 Electronically filed 08/08/2017 01:09:06 / CV 17-884185 / Case Number Nbr. 11397 INSURED COPY J 001105 PAGE 65 OF 212



Liberty Mutual Insurance
Terry Prichard
Commercial Insurance Property Claims
PO Box 515097
Los Angeles, CA 90051-5097
Fax: 888-268-8840

September 15, 2016

Chagrin Surgery Center LLC
24025 Commerce Park Suite 2
Beachwood, Ohio 44122
Attn: Barbara Cowling

Re: Insured: Chagrin Surgery Center, LLC
File No.: 23221628
Loss Type: Equipment Breakdown
Date of Loss: 8-15-2016
Loss Locations: 24025 Commerce Park Suite 2, Beachwood, Ohio 44112

Dear Barbara,

This letter will serve to summarize adjustment activity with regard to the above referenced claim and to confirm coverage afforded for this loss.

We have reviewed the West American Insurance Company policy number 8ZW57149226 with effective dates of June 15, 2016 to June 15, 2017. Any recoverable loss is subject to the \$1000.00 policy deductible. You have Business Personal property coverage of \$2,387,718. 2% Automatic Increase to Business Personal Property. Replacement Cost is included.

This is an Equipment Breakdown loss to the exterior A/C rooftop unit. You do carry Equipment Breakdown coverage under form number BP8237 08/15. If you are responsible under your lease to repair this A/C unit please let me know so we can consider this for payment under this coverage.

When the A/C unit malfunctioned it caused the change in temperature or humidity causing some perishable items to be damaged by spoilage.

Equipment Breakdown coverage provides coverage for spoilage to perishable goods with a \$50,000 limit of coverage. You have BP8065 01/07 endorsement that provides \$10,000 coverage for spoilage to perishable goods. You also have BP8056 07/13 that provides \$10,000 coverage for spoilage to perishable goods. You have total of \$70,000 coverage for perishable goods.

Perishable goods would be defined in the policy as:

"Perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

Coverage will be provided for the water damage to the equipment. Please send me those invoices for consideration.

We discussed the cabinets in that room possibly being damaged by water. Since they are attached to the building we need documentation showing Chagrin Surgery Center put in those cabinets and not the

building owner. If they were put in by Chagrin Surgery Center this could be considered Improvements and Betterments which would be covered due to the water damage.

Please feel free to give me a call if you have any questions. I can be reached at 513-262-1940.

Sincerely,

LIBERTY MUTUAL COMMERCIAL CLAIMS

Terry Prichard
General Adjuster, Large Loss Commercial Property
513-262-1940
Fax # 1-888-268-8840 Please make sure my name and claim number on all correspondence
Terry.prichard@libertymutual.com

CC: Strassman Insurance Service Inc.



Liberty Mutual Insurance
Terry Prichard
Commercial Insurance Property Claims
PO Box 515097
Los Angeles, CA 90051-5097
Fax: 888-268-8840

October 25, 2016

Bruce Riskin
Public Adjuster
300 Craig Rd.
Manalapan, NJ 07726

Re: Insured: Chagrin Surgery Center, LLC
File No.: 23221628
Loss Type: Equipment Breakdown
Date of Loss: 8-15-2016
Loss Locations: 24025 Commerce Park Suite 2, Beachwood, Ohio 44112

Dear Mr. Rifkin:

We have received and thank you for your email dated October 11, 2016.

We have reviewed your correspondence on the perishable items coverage. When the A/C unit malfunctioned it caused the change in temperature or humidity causing some perishable items to be damaged by spoilage. The lens inventory packages and disposables inventory packages were damaged by the change in temperature or humidity. They did not suffer actual physical water damage. Portions of the ones that were damaged were still in boxes that were stored in the room.

We maintain our position on coverage for these items based on the temperature or humidity change to perishable items. There is total of \$70,000 coverage for perishable stock.

The foregoing is not intended to waive any defenses which are now, or which may hereafter become available to Liberty Mutual Insurance Company. The foregoing does not constitute a waiver of any term, condition, limitation, or exclusion of the insurance policy(ies) or any rights and defenses under the policy(ies), and Liberty Mutual Insurance Company hereby expressly reserves all of its rights and defenses thereunder, at law, in equity or otherwise including, but not limited to, the defense that the claim

Please feel free to give me a call if you have any questions. I can be reached at 513-262-1940.

Sincerely,

Terry Prichard
General Adjuster, Large Loss Commercial Property
Phone Number: 513-262-1940
Terry.prichard@libertymutual.com
Please make sure my name and claim number on all correspondence

CC: Strassman Insurance Service Inc.

Electronically Filed 08/08/2017 09:06 / CV 17-884185 / Confirmation Nbr. 1139887 / CLAHJ

Exhibit

3

Pull to open.

ORIGIN ID:BKLA (216) 443-7950
CCOC
1200 ONTARIO
CLEVELAND, OH 44113
UNITED STATES US

SHIP DATE: 08AUG17
ACTWGT: 1.00 LB
CAD: 106501655/WSXI2900
BILL SENDER

TO **WEST AMERICAN INSURANCE COMPANY**

50 WEST BROAD STREET, SUITE 1300

COLUMBUS OH 43215

(216) 443-7950
INV: 32957801
PO: _____
REF: CV17884185
DEPT: _____



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43215
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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CHAGRIN SURGERY CENTER, LLC
Plaintiff

Case No: CV-17-884185

Judge: BRENDAN J SHEEHAN

WEST AMERICAN INSURANCE COMPANY
Defendant

JOURNAL ENTRY

CMC BY PHONE SET FOR 09/28/2017 AT 09:00 AM BY TELEPHONE.

CASE MANAGEMENT CONFERENCE (CMC) WILL BE CONDUCTED BY TELEPHONE WITH THE COURT'S STAFF ATTORNEY.

PLAINTIFF'S COUNSEL SHALL INITIATE CONFERENCE CALL WITH ALL OTHER PARTIES AND CONTACT THE COURT'S STAFF ATTORNEY, JAYNE JAKUBAITIS (216-443-8611) PROMPTLY AT THE APPOINTED TIME. PARTIES SHALL HAVE THEIR CALENDARS AVAILABLE AND BE PREPARED TO DISCUSS SERVICE ISSUES, DISCOVERY PROGRESS, SCHEDULING MATTERS, AND ALTERNATIVE DISPUTE RESOLUTION OPTIONS.

THE PARTIES SHOULD NOT WAIT FOR THE CMC BEFORE BEGINNING TO CONDUCT DISCOVERY.

ANY PARTY WHO FAILS TO PARTICIPATE IN THE CMC WILL BE DEEMED TO HAVE ACCEPTED THE SCHEDULING ORDER ESTABLISHED BY THE COURT.

PARTIES MAY REQUEST THAT THE CASE MANAGEMENT CONFERENCE BE HELD IN PERSON WITH THE COURT BY FILING A MOTION AT LEAST SEVEN DAYS PRIOR TO THE SCHEDULED CASE MANAGEMENT CONFERENCE.

Judge Signature

09/05/2017

09/03/2017

RECEIVED FOR FILING
09/05/2017 11:57:32
NAILAH K. BYRD, CLERK

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